

VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS (VAAFMM)

ADMINISTRATIVE PENALTY FORM

This form is to be used to determine proposed administrative penalties.

Case Name _____ Complaint No. _____

Violation(s) _____

CLASSIFICATION OF VIOLATION(S)

The class of the violation must be first determined. To do so, the Administrative Penalty Guidance on pages 6 and 7 may be used. The Guidance is a listing of common violations and their typical class type. Each violation must be evaluated as to whether the typical class type found in the Guidance is appropriate given the specific facts of the violation using these criteria:

CLASS I – A Class I violation meets one or more of the following criteria:

- (1) An assurance of discontinuance; or
- (2) An order issued pursuant to 6 V.S.A. Chapter 172; or
- (3) The violation presents a threat of substantial harm to the public health, safety, or welfare or to the environment.

CLASS II – A Class II violation is a minor violation of a statute listed in 6 V.S.A. Chapter 172, a rule promulgated under 6 V.S.A. Chapter 172, or a related permit.

CLASS III – A Class III violation is a de minimis violation of a statute listed in 6 V.S.A. Chapter 172, a rule promulgated under 6 V.S.A. Chapter 172, or a related permit.

INITIAL PENALTY CALCULATION

Once the class of violation is determined, an initial penalty calculation must be made. Each of the following sections should be completed by circling the appropriate score.

- 1. The degree of actual or potential impact on public health, safety, and welfare:**
 - (a) No actual impact or minor potential impact 0
 - (b) Minor actual impact or moderate potential impact 1
 - (c) Moderate actual impact or major potential impact 2
 - (d) Major actual impact 3

- 2. The degree of actual or potential impact on the environment:**
 - (a) No actual impact or minor potential impact 0
 - (b) Minor actual impact or moderate potential impact 1
 - (c) Moderate actual impact or major potential impact 2
 - (d) Major actual impact 3

- 3. Did the respondent know or have reason to know that the violation existed:**
 - (a) Knowledge of the requirements:**
 - (i) New requirement 0
 - (ii) Had reason to know about violated requirement 1
 - (iii) Had a permit or permit by rule 2
 - (iv) Repeated the violation after written notice, sent by certified mail 3

 - (b) Knowledge of the facts of the violation:**
 - (i) Could not have reasonably known that the violation existed 0
 - (ii) Should have reasonably known that the violation existed 1
 - (iii) Some evidence that the respondent knew the violation existed 2
 - (iv) Clear evidence that the respondent knew the violation existed 3

Lower number of 3(a) or 3(b) _____

4. The respondent’s record of compliance with 6 V.S.A. Chapter 172 or related rules, permits, orders, or assurances of discontinuance in the seven years preceding the violation:

- (a) No prior violations 0
- (b) One prior violation 1
- (c) Two prior violations 2
- (d) Three or more prior violations 3

5. The length of time the violation existed:

This is not to be assessed if VAAFm is also seeking continuing violation(s) under Section 8 because otherwise the fact that a violation is continuing would be considered twice in the calculating of the total penalty amount.

- (a) Immediate correction 0
- (b) A violation of very short duration 1
- (c) A violation of moderate duration 2
- (d) A violation of long duration 3

Total of Sections 1, 2, 3, 4, and 5 _____

Comments, if any:

6. PERCENTAGE OF MAXIMUM PENALTY CALCULATION

After Sections 1 through 5 have been scored and added to compute a total score, the initial penalty amount shall be determined by multiplying the applicable percentage based on the total score by the maximum penalty amount for the Class of violation. The following table lists the applicable percentage based on the total score and resulting calculation for each class:

| TOTAL SCORE | PERCENTAGE | CLASS I | CLASS II | Class III |
|-------------|------------|---------|----------|-----------|
| 1-5 | 50% | \$250 | \$150 | \$50 |
| 6-10 | 75% | \$375 | \$225 | \$75 |
| 11-15 | 100% | \$500 | \$300 | \$100 |

INITIAL PENALTY AMOUNT BEFORE ADJUSTMENTS \$ _____

7. ECONOMIC BENEFIT AND COST OF ENFORCEMENT ADJUSTMENT

The penalty amount calculated in Section 6 may be adjusted when the respondent has realized an economic benefit as a result of the violation(s) and/or the State has incurred costs of enforcement related to the violation(s) by adding an amount equal to such economic benefit and/or enforcement costs to the penalty amount.

(a) Economic benefit \$ _____

Calculation:

(b) Cost of enforcement \$ _____

Calculation:

Total of Sections 7(a) and 7(b) \$ _____

8. CONTINUING VIOLATIONS

Any violation of a statute listed in 6 V.S.A. Chapter 172 or a rule thereunder or a condition of a related permit, order, or assurance of discontinuance that continues longer than one day may be considered a continuing violation subject to additional penalties for each day of continuance.

The continuing violation amount may be determined by multiplying the applicable percentage based on the total score by the per-day maximum continuing violation penalty for the class of violation. The following table lists the applicable percentage based on the total score and resulting calculation for each class:

| TOTAL SCORE | CLASS I | CLASS II | Class III |
|-------------|---------|----------|-----------|
| 1-5 | \$50 | \$30 | \$10 |
| 6-10 | \$75 | \$45 | \$15 |
| 11-15 | \$100 | \$60 | \$20 |

(a) Per-day penalty amount for continuing violation _____

(b) Number of days constituting continuance of the violation _____

Total of Sections 8(a) multiplied by 8(b) \$ _____

9. FINAL ADJUSTMENTS

After the initial penalty amount and the amount of economic benefit and/or the costs of enforcement and the penalty for a continuing violation, if applicable, have been determined, the criteria below shall be considered.

(a) Mitigating circumstances \$ _____

If mitigating circumstances exist, the penalty may be reduced. Unreasonable delay by VAAFm in seeking enforcement shall be considered a mitigating circumstance. Mitigating circumstances may include factors outside the control of the respondent.

Explain:

(b) Deterrent effect \$ _____

The penalty amount may be increased up to the maximum allowed in the class of the violation if it is determined that a larger penalty is reasonably necessary to deter the respondent from committing this violation or similar violations in the future.

Explain:

Total of Sections 9(a) and 9(b) \$ _____

FINAL PENALTY AMOUNT

The maximum administrative penalty assessed for separate and distinct violations of 6 V.S.A. Chapter 172 shall not exceed \$500.00 for each violation pursuant to 6 V.S.A. § 3035.

| | | |
|---------------------------------------|-----------|----------|
| Initial Penalty | Section 6 | \$ _____ |
| Economic Benefit and Enforcement Cost | Section 7 | \$ _____ |
| Continuing Violation(s) | Section 8 | \$ _____ |
| Amount per day | | \$ _____ |
| Final Adjustment | Section 9 | \$ _____ |
| TOTAL PENALTIES: | | \$ _____ |

Prepared by _____ Date _____

ADMINISTRATIVE PENALTY GUIDANCE

This Guidance is only intended to provide a listing of common violations and their typical class type. It is not intended to substitute for the consideration of each violation under Classification of Violations on page 1.

Class I (*Up to \$500.00 per violation per day*)

- Owners required to register all apiary locations with VAAFMM
- Registered owners required to submit annual report to VAAFMM
- Prohibition of knowingly distributing diseased bees without written consent

Class II (*Up to \$300.00 per violation per day*)

- Owners required to notify VAAFMM as soon as possible if disease found
- Sellers required to cease shipments of bees immediately if disease detected until they are able to receive a certificate from VAAFMM
- Persons knowingly importing bees, used equipment, or colonies required to submit approved permit and certificate of inspection to VAAFMM 10 days prior to entry
- Owners are prohibited from locating an apiary within two miles of another registered apiary

Class III (*Up to \$100.00 per violation per day*)

- Registered owners required to annually report the location and number of all colonies
- Registered owners required to annually report any anticipated changes in colony locations within two weeks of submitting the report
- Registered owners required to annually report the presence of any diseases
- Registered owners required to annually report whether they imported any colonies or used equipment
- Registered owners required to annually report their status of as a seller
- Registered owners required to annually report a varroa mite pest mitigation plan
- Owners required to pay a registration fee of \$10 per apiary location
- Owners required to have movable comb frames
- Sellers required to have an annual inspection prior to the sale of any bees
- Permits are generally required for any importation of bees, used equipment, or colonies
- Persons transporting bees, used equipment, or colonies into Vermont must submit a valid certificate of inspection (within 45 days of import) to VAAFMM 10 days prior to their importation